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Kansas Department of Health and Environment
Bureau of Air and Radiation

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**Class I Operating Permit
Permit Termination and Source Re-Classification
Technical Guidance Document - BAR 2004-11**

Purpose: To provide the basis and outline the practices of the Bureau of Air and Radiation for terminating Class I permits for sources seeking re-classification of the source through a Class II permit application.

The Clean Air Act requires the EPA administrator to implement Title V permit regulations, which must include a requirement that the permitting authority have authority to issue permits for a fixed term, not to exceed 5 years. 42 USC 7661a, 40 CFR 70.4. K.S.A. 65-3008b gives the secretary of KDHE authority to suspend, revoke, modify, or reopen permits for cause.

As a general rule, K.A.R. 28-19-514(a)(3) establishes a maximum permit term of 5 years for Class I sources. K.A.R. 28-19-514(b), however, provides an exception to this general rule. Subsection (b) allows the Class I operating permit to extend beyond the 5-year term as long as a complete renewal application for the current permit is submitted within the 18-month "window" for renewal. Though not technically a renewal of the current permit, subsection (b)(3) allows a Class I operating permit to expire on the effective date of any new operating permit if a different class of operating permit is issued.¹

K.A.R. 28-19-541(g) requires a Class I permit holder seeking a Class II permit to file the Class II application 180 days before the Class I permit term expires and makes the Class I permit holder ineligible for a Class II permit until the Class I permit expires.

Under 40 CFR 70.7(c), the term "termination" is used in conjunction with permit expiration and the source's right to operate. Terminating a permit for cause then is the remedy for a source who fails to make a timely

¹40 CFR 70.7(b) prohibits the operation of a Class I source after the time for making a timely and complete application under an approved permit program unless the source has made application during the specified time. If an application is received during this time, continued operation of the source beyond the permit's expiration date is not a violation until the permitting authority takes final action on the application or until the source fails to submit additional information requested by the permitting authority to complete the application. The 70.7(b) prohibition does not apply to Section 502(b)(10) changes made under 40 CFR 70.4(b)(12)(i) or to minor permit modifications made under either 40 CFR 70.7(e)(2)(v) or (e)(3)(v).

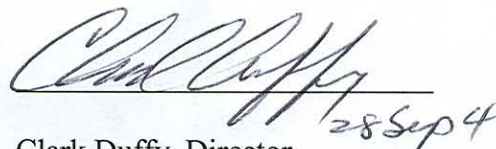
or complete renewal application within the 18-month renewal period. Given the "not to exceed 5 years" language and the Kansas SIP-approved provisions of 514(b) and 541(g), the Bureau of Air and Radiation (BAR) has authority to terminate a Class I permit for cause upon the effective date of the Class II permit as long as the Class II permit application was timely made and the source is no longer subject to the Title V requirements.

As long as the Class I source seeking to reclassify its operations as a Class II source meets the application filing requirements of K.A.R. 28-19-541(g) and BAR has determined the stationary source does not require a Class I operating permit as provided in K.A.R. 28-19-514(b)(4), the BAR will extend the Class I permit shield to the source until the effective date of the Class II permit at which time the Class I permit shall expire.

The transition from a Class I operating permit to a Class II operating permit shall proceed according to the following steps:

1. The source shall file a Class II permit application with BAR no later than 180 days before the source's Class I permit expires. K.A.R. 28-19-541(g).
2. BAR staff shall conduct an evaluation of the Class II application and all submitted documentation as well as information in the existing Class I permit file.
3. BAR staff shall respond in writing and inform the source of the facility's status. If a Class II permit is issued, the permit shall state that the Class I permit is terminated, effective with the effective date of the Class II permit. K.A.R. 28-19-514(b)(3).
4. The source shall submit to BAR the semi-annual reports for the most recent 6 month reporting period, whether a full or partial reporting period, in which the source operates as a Class I permitted source.
5. The source shall submit to BAR the annual certification required for the most recent year, whether a full or partial year, in which the source operates as a Class I permitted source.
6. The source shall submit to BAR the emission inventory for the last calendar year, whether a full or partial year, in which the source operates as a Class I source.

Approved by:

A handwritten signature in black ink, appearing to read "Clark Duffy", with a date "28 Sep 4" written below it.

Clark Duffy, Director
Bureau of Air and Radiation